Filed 9/24/15 Atwood v. Brooks CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

PACO MICHELLE ATWOOD, etc., Plaintiff and Respondent, v. STEPHAN BROOKS, Defendant and Appellant.	B258407 (Los Angeles County Super. Ct. No. BC 505725) ORDER MODIFYING OPINION AND DENYING PETITION FOR REHEARING [NO CHANGE IN JUDGMENT]

THE COURT:*

It is ordered that the opinion filed on August 25, 2015, be modified as follows: at page 2, paragraph 4, line 1, delete the words "an individual and"; at page 6, paragraph 1, line 11, delete the comma following the word "tenancy" and delete the words "but that deed was not recorded until several years after her death"; at page 7, paragraph 1, line 5, italicize the word "*unilaterally.*"

The petition for rehearing is denied. There is no change in judgment.

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*EPSTEIN, P. J. COLLINS, J.

Filed 8/25/15 Atwood v. Brooks CA2/4 (unmodified version)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

PACO-MICHELLE ATWOOD, etc., Plaintiff and Respondent, v. STEPHAN BROOKS, etc., Defendant and Appellant.	B258407 (Los Angeles County Super. Ct. No. BC 505725)

APPEAL from an order of the Superior Court of Los Angeles County, Maria E. Stratton, Judge. Affirmed.

Stephan Brooks, in pro. per., for Defendant and Appellant.

Law Offices of L'Tanya M. Butler and L'Tanya M. Butler; Law Offices of Chrisangela Walston and Chrisangela Walston for Plaintiff and Respondent.

Defendant Stephan Brooks appeals from an order granting summary adjudication of plaintiff Paco-Michelle Atwood's claim for partition sale of real property.[1] Finding no triable issues of material fact, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The case involves a dispute over a family residence in Inglewood. The residence was acquired in 1996 by the late Sireaner Townsend and her daughter, the late Sherrell Atwood, as joint tenants. Sherrell's children are plaintiff Paco-Michelle, defendant Stephan, and nonparty Rozelle Sykes. For the sake of clarity, we refer to Sherrell and her family members by their first names, with no disrespect intended.

Sherrell died in October 2006. She was survived by her children and her mother Sireaner, who died over one year later in February 2008.

The present complaint was filed by Paco-Michelle as an individual and administrator of Sherrell's estate (the estate), and alleged claims for partition sale of the residence, accounting, and declaratory relief. The complaint was filed against Stephan, who was sued both individually and as successor trustee of the Sireaner Townsend Revocable Living Trust Dated June 22, 2004 (the trust), and Budget Finance Company. Budget is not a party to this appeal.

Paco-Michelle moved for summary adjudication of the partition claim. She argued the estate has a two-thirds interest in the residence, which is held in common with Stephan, who has a one-sixth interest, and the trust, which has a one-sixth interest.[2]

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[1] The statutes governing a partition sale by a referee are found in Code of Civil Procedure section 873.510 et seq. An order granting a partition sale, although interlocutory, is appealable: "In an action for partition, an interlocutory judgment determining the rights and interests of parties and directing that partition be made has been made expressly appealable by Code of Civil Procedure section 904.1, subdivision [(b)(9)]. [Citation.]." (*Richmond v. Dofflemyer* (1980) 105 Cal.App.3d 745, 753, fn. omitted.)

[2] Stephan contends he is the sole beneficiary of Sireaner's trust and pour over will.

In support of her motion, Paco-Michelle submitted the following deeds concerning the residence: The first indicated the property was acquired in 1996 by Sireaner and Sherrell as joint tenants. The second demonstrated that in 2004, Sireaner transferred her one-half interest in the property to the trust. The third, a "Trust Transfer Deed," conveyed the trust's interest in the property back to Sireaner. It was executed on January 14, 2006. The fourth deed, also executed on that date, transferred Sireaner's interest to "SIRENER TOWNSEND, SHERRELL ATWOOD and STEPHAN MARIO BROOKS, MOTHER, DAUGHTER AND GRANDSON AS TENANTS IN COMMON." This instrument stated that the transfer was a "bona fide gift and grantor received nothing in return." The fifth deed, a "Trust Transfer Deed" executed on the same date, transferred Sireaner's one-sixth interest back to the trust. These deeds were recorded before Sireaner's death.

Stephan argued that he owns the entire residence as the sole surviving joint tenant. He argued the estate did not acquire Sherrell's interest, which passed to the surviving joint tenants: Sireaner, Stephan, and the trust. He produced a sixth deed, also executed on January 14, 2006, titled "Trust Transfer Deed Correction of Vesting of Title." He argued this deed corrected the vesting of title from tenancy in common to joint tenancy. According to the sixth deed, Sireaner transferred her one-half interest in the residence to "SIRENER TOWNSEND, SHERRELL ATWOOD and STEPHAN MARIO BROOKS, mother, daughter and grandson, all as joint tenants." The sixth deed was not recorded until 2014, several years after both Sherrell and Sireaner had died.

The trial court held that the joint tenancy between Sireaner and Sherrell was terminated by the second deed, which transferred Sireaner's one-half interest to the trust. The court cited *Estate of Mitchell* (1999) 76 Cal.App.4th 1378, 1385: "A joint tenant may sever a joint tenancy in real property unilaterally by: (1) executing and delivering a deed to a third person, (2) executing a deed to him or herself, (3) executing a written declaration of severance, or (4) executing any other written instrument evidencing an intent to sever. [Citation.]"

The trial court reasoned that the transfer of Sireaner's interest to the trust extinguished the joint tenancy and established a tenancy in common. The subsequent transfers by Sireaner were consistent with the intent to hold title as tenants in common: The third deed transferred the trust's interest to Sireaner; the fourth deed transferred her interest to herself, Sherrell, and Stephen as tenants in common, giving each a one-sixth interest. As a result, Sherrell retained her original one-half interest, which, when added to her one-sixth interest from Sireaner, gave her a two-thirds interest in the property. The fifth deed—which placed Sireaner's one-sixth interest back in the trust—left Sherrell's two-thirds interest intact. The court held that the sixth deed—purporting to correct the vesting of title from tenants in common to joint tenancy—did did not create a triable issue of material fact.

The court found that because the estate held a two-thirds undivided interest in the property as a tenant in common, it was entitled to a partition sale of the residence. Finding no triable issues of material fact, the court granted Paco-Michelle's motion for summary adjudication of the partition claim. Stephan filed a notice of appeal several weeks before the order granting the motion was entered. The premature notice of appeal is deemed to have been filed immediately after entry of the summary adjudication order. (Cal. Rules of Court, rule 8.104(d) and (e).)

DISCUSSION

I

"A party may move for summary adjudication as to one or more causes of action within an action . . . ." (Code Civ. Proc., § 437c, subd. (f)(1).) The motion is treated "in all procedural respects as a motion for summary judgment." (*Id.* at subd. (f)(2).)

In reviewing an order granting summary adjudication, we apply the same de novo standard of review that applies to an appeal from an order granting summary judgment. (*Davis v. Kiewit Pacific Co.* (2013) 220 Cal.App.4th 358, 363.) We independently review the record, and consider all of the evidence that was properly admitted by the trial court. (*Ibid.*) "Generally, if all the papers submitted by the parties show there is no

triable issue of material fact and the '"moving party is entitled to a judgment as a matter of law,'" the court must grant the motion for summary judgment. [Citations.]" (*Id.* at pp. 363–364.)

We first consider whether the transfer of Sireaner's interest to the trust severed the joint tenancy. Stephan contends the transfer to Sireaner's inter vivos trust was simply a way to avoid probate, and did not divest her of power to manage her assets. Stephan points out that under California law, the trustor of a revocable inter vivos trust retains full control of the trust's assets, which remain within reach of the trustor's creditors. (*Zanelli v. McGrath* (2008) 166 Cal.App.4th 615, 633.)

Although Sireaner retained control of her property in her revocable inter vivos trust, that is not dispositive of the severance issue. The general rule with regard to severance is that the execution of a deed from a joint tenant to him or herself severs the joint tenancy. A joint tenant may sever a joint tenancy unilaterally by executing a deed to him or herself.[3] (*Estate of Mitchell*, *supra*, 76 Cal.App.4th at p. 1385.)

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[3] Civil Code section 683.2 provides: "(a) Subject to the limitations and requirements of this section, in addition to any other means by which a joint tenancy may be severed, a joint tenant may sever a joint tenancy in real property as to the joint tenant's interest without the joinder or consent of the other joint tenants by any of the following means:

"(1) Execution and delivery of a deed that conveys legal title to the joint tenant's interest to a third person, whether or not pursuant to an agreement that requires the third person to reconvey legal title to the joint tenant.

"(2) Execution of a written instrument that evidences the intent to sever the joint tenancy, including a deed that names the joint tenant as transferee, or of a written declaration that, as to the interest of the joint tenant, the joint tenancy is severed.

"(b) Nothing in this section authorizes severance of a joint tenancy contrary to a written agreement of the joint tenants, but a severance contrary to a written agreement does not defeat the rights of a purchaser or encumbrancer for value in good faith and without knowledge of the written agreement.

"(c) Severance of a joint tenancy of record by deed, written declaration, or other written instrument pursuant to subdivision (a) is not effective to terminate the right of survivorship of the other joint tenants as to the severing joint tenant's interest unless one of the following requirements is satisfied:

We conclude that the transfer from Sireaner to her revocable inter vivos trust was the equivalent of a transfer to herself, which terminated the joint tenancy unless an exception applies. The record contains no basis for an exception in this case. Although Sireaner possessed authority to enter a joint tenancy agreement with Sherrell, she did not do so. (See Civ. Code, § 683 [joint tenancy may be "created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy"].) Instead of entering a joint tenancy agreement, Sireaner transferred the trust's interest back to herself (third deed), which she then conveyed to herself, Sherrell, and Stephan as tenants in common (fourth deed). After transferring her remaining one-sixth interest to the trust (fifth deed), she executed a sixth deed—a "Trust Transfer Deed"—that purported to correct the vesting of title from tenancy in common to joint tenancy, but that deed was not recorded until several years after her death.

"(1) Before the death of the severing joint tenant, the deed, written declaration, or other written instrument effecting the severance is recorded in the county where the real property is located.

"(2) The deed, written declaration, or other written instrument effecting the severance is executed and acknowledged before a notary public by the severing joint tenant not earlier than three days before the death of that joint tenant and is recorded in the county where the real property is located not later than seven days after the death of the severing joint tenant.

"(d) Nothing in subdivision (c) limits the manner or effect of:

"(1) A written instrument executed by all the joint tenants that severs the joint tenancy.

"(2) A severance made by or pursuant to a written agreement of all the joint tenants.

"(3) A deed from a joint tenant to another joint tenant.

"(e) Subdivisions (a) and (b) apply to all joint tenancies in real property, whether the joint tenancy was created before, on, or after January 1, 1985, except that in the case of the death of a joint tenant before January 1, 1985, the validity of a severance under subdivisions (a) and (b) is determined by the law in effect at the time of death. Subdivisions (c) and (d) do not apply to or affect a severance made before January 1, 1986, of a joint tenancy."

Paco-Michelle argues the fourth deed is conclusive against the grantor (Sireaner) with regard to the creation a tenancy in common. (Civil Code, § 1107.)[4] We agree. Once Sireaner transferred her one-half interest to herself and two others as tenants in common, she was bound by that transfer. Having created a tenancy in common with Sherrell and Stephan, she lacked the unities of interest to unilaterally create a joint tenancy as to their interests. (See *Tenhet v. Boswell* (1976) 18 Cal.3d 150, 155 [under common law, creation of a joint tenancy requires "unity of interest, unity of time, unity of title, and unity of possession"].)

At most, Sireaner had authority to create a joint tenancy as to her remaining one-sixth interest. As to that one-sixth interest, it passed to Stephan either as the surviving joint tenant, or the sole beneficiary of the trust. In either case, the result remains the same: The estate has a two-thirds interest in the residence, comprised of Sherrell's original one-half interest plus the one-sixth interest received from Sireaner; and Stephan has a one-third interest in the residence, comprised of his one-sixth interest plus Sireaner's one-sixth interest.

Stephan challenges the division of proceeds from the partition sale. He argues that in addition to his one-third interest, he is entitled to reimbursement of property taxes, mortgage payments, insurance premiums, and other expenses associated with maintaining the residence. Paco-Michelle responds that "[i]ssues of credits and offsets were not part of the Motion for Summary Adjudication and, thus, were reserved for trial." In light of her concession, we conclude the estate is entitled to a partition sale and division of proceeds, subject to a future trial regarding credits and offsets.

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[4] "Every grant of an estate in real property is conclusive against the grantor, also against everyone subsequently claiming under him, except a purchaser or incumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded." (Civ. Code, § 1107.)

II

Stephan raises several other grounds for reversal that we find unpersuasive. He contends Paco-Michelle lacks standing to maintain this action as administrator of the estate. The contention lacks merit in light of Paco-Michelle's appointment as administrator of Sherrell's estate. A partition action may be maintained by an owner of an estate of inheritance in real property where such property or estate therein is owned by several persons concurrently or in successive estates. (Code Civ. Proc., § 872.210, subd. (a)(2).) As administrator of an estate that owns an inheritance in real property that is co-owned by another person, Paco-Michelle has standing to maintain this action.

Stephan also argues that Paco-Michelle unreasonably delayed in filing a probate action for the estate, which should have been closed long ago. He argues the probate action must be dismissed because of the unreasonable delay. We have no jurisdiction to dismiss the probate action, which is not before us, or to review any rulings in that action.

Stephan contends the superior court lacks jurisdiction over this case because Sherrell never challenged the trust's interest in the property under Probate Code section 16061.8, and Paco-Michelle did not establish the estate's "ownership" under Probate Code section 17200. However, neither statute imposes a jurisdictional prerequisite to this action. We conclude the superior court has jurisdiction to decide this action. (Code Civ. Proc., § 872.110 [superior court has jurisdiction over partition actions].)

Stephan contends that because judges of Los Angeles County Superior Court received unauthorized employment benefits from the county, they are disqualified from hearing this case. He cites *Sturgeon v. County of Los Angeles* (2008) 167 Cal.App.4th 630, which reversed a summary judgment for the county in a taxpayer action that challenged certain employment benefits paid to judges, and *Sturgeon v. County of Los Angeles* (2010) 191 Cal.App.4th 344 (*Sturgeon II*), which affirmed a summary judgment for the county based on newly enacted legislation regarding trial court funding.

In light of *Sturgeon II*, which upheld the employment benefits paid by the county, the improper funding allegation is irrelevant. The record is devoid of any evidence that would support a finding of judicial misconduct, improper bias, conspiracy, fraud, or other

wrongdoing. There is no assertion that the trial court had a disqualifying financial interest within the meaning of section 170.1 of the Code of Civil Procedure. There was no motion alleging prejudice against a party or an attorney under Code of Civil Procedure section 170.6. The generalized allegation of judicial misconduct is entirely baseless.

DISPOSITION

The order is affirmed. Respondent is awarded her costs on appeal.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.